IN THE HIGH COURT OF UTTARANCHAL,

AT NAINIATAL

CRIMINAL JAIL APPEAL NO. 878 OF 2001

Ganga DassS/o Chet Ram
R/o Sahwajpur
P.S. Ajitmal
District Oria U.P. ..... Appellant

Versus

State of Uttaranchal ..... Respondent

Hon'ble J.C.S.Rawat, J.

This is a Criminal Jail Appeal against the Judgment and order dated 30.05.2001 passed by Sri Ashok Kumar, the then Session Judge, Chamoli in Sessions trial No. 18 of 1993 State Vs. Ganga Dass, whereby the learned Session Judge has convicted and sentenced the appellant U/s 328 I.P.C. to undergo R.I. for 05 years, and a fine of Rs. 2000/- (Rupees two thousands). In default of payment of fine the appellant was ordered to undergo S.I. for one year.

The facts, in brief, are that Govind Singh (PW1) lodged a written report on 16.06.93 at 12.10 p.m. at P.S. Ukhimath, District Chamoli that in the evening of 14/15.06.93 eight persons stayed in room no. 1 of his Hotel (Rana Hotel). They prepared their food themselves. Ganga Dass & Smt. Vedmati and others stayed and Ganga Dass (appellant) booked the room in his name. Smt. Vedmati and Ganga Dass prepared the food of all persons. At about 12 (night), Badri Prasad Tiwari (PW4) started shouting that they were under intoxication and they had been administered some

Substance in the food by Ganga Dass and Smt. Vedmati from which they were getting vertigo. Their 5 companions also became unconscious. They called the pharmacist at once and they all pilgrims were getting treatment. Smt. Vedmati and Ganga Dass were absconding. On the basis of written report F.I.R. Ex. Ka 3 was prepared. The In –charge Primary Health Centre, Rambada, District chamoli also sent a report to the Police in this regard, which is Ex. Ka 2. The investigation was entrusted to S.I. Om Veer Singh (PW5), who visited the place of occurrence and prepared site plan Ex. Ka 5. He also took two Rotis into his possession and prepared recovery memo (Ex. Ka 6). He also took into possession register (Ex. 1) from the Hotel. He also took into possession utensils and stove and prepared recovery memo Ex. Ka 8. After completing the investigation he submitted charge sheet Ex. Ka 9 against the accused.

Charge U/s 328 I.P.C. was framed against the accused. The accused denied the charge and claimed to be tried.

The Prosecution in support of its case examined PW1 Govind Singh Rana, who is the owner of Rana Hotel. He has proved written report Ex. Ka 1. PW2, Vikram Singh Pawar is the Pharmacist, Government Hospital, Parkadi. He proved Ex. Ka 2. PW3, Kushal Pal Singh, who was Head Moharrir at out post Gaurikund. He has proved the written report Ex. Ka 1, F.I.R. Ex. Ka 3 and G.D. entry Ex. Ka 4. PW5, S.I. Om Veer Singh, Investigated the case.

On consideration of the evidence on record the learned trial court convicted and sentenced the appellant as mentioned above.

I have heard Ms. Nishat Intezar, learned Amicus Curiae for the appellant and Sri G.S.Sindhu, learned A.G.A.

The appellant has been charged U/s 328 I.P.C. It is not disputed that the appellant and other co-pilgrims namely, Badri Prasad Tiwari, PW4, Smt. Ramwati Devi, Smt. Radhika Devi, Mahendra prasad Sharma, Balbhadra Pathak and Munni lal were in the same Hotel on the fateful night of the incident. PW1 Govind Singh, who was owner of Rana Hotel stated that PW4 Badri Prasad Tiwari started crying in the night that he has been administered poison by Ganga Dass then he came to the room and found co-pilgrims in unconscious in the room and he took them to the Hospital which was on the ground floor of his Hotel. They were given primary treatment by Vikram Singh Pawar, PW2, Pharmacist, who was in charge of that dispensary. PW2 Vikram Singh, Pharmacist has stated in his statement that in the Rambada Dispensary no doctor has been posted. PW4 Badri Prasad Tiwari, who was also the victim of he poisoning, has stated that he himself made hue and cry when he was feeling giddiness. He went to Govind Singh, PW1. PW2 Vikram Singh Pawar went inside the room and saw that five persons were lying unconscious and they were vomiting. This witness also stated that Ganga Prasad has confessed before him that they all had taken Bhang but he found that Ganga Dass appellant was in the state of consciousness. He was of the opinion that they had taken some intoxicant substance and he made the treatment with administering Glucose and injection on the spot. The appellant in his statement U/s 313 Cr. P.C. stated that he and the co-pilgrims had taken Bhang in the night.

In view of foregoing discussion, it is evident that Badri Prasad Tiwari and co-pilgrims have been administered some poisonous substance by which they became unconscious.

Now, I have to see who administered the poisonous substance to Badri Prasad Tiwari, Smt. Rambati, Smt. Radhika Devi, Mahendra Prasad Sharma, Balbhadra Pathak and Munni Lal. I have to see whether Badri prasad and other co-pilgrims stayed in the Rana Hotel on the fateful night of the incident or not. The prosecution produced the evidence of PW1 Govind Singh Rana, Vikram Singh Pawar PW2 and Badri Prasad Tiwari, PW4 who have stated in their statements that PW1 Govind Singh was the owner of Rana Hotel and he stated that 8 persons arrived in his Hotel and they booked a room on 14.06.93. He further stated that these persons left for Kedarnath and again came back in the same night. They were staying in room no.1. PW4 Badri Prasad Tiwari has stated that the appellant met him in the compartment of train and he stated that he was a resident of Ayodhya. He was also going to Kedarnath. The appellant also posed the co-pilgrims that he had been to Kedarnath earlier, therefore, he knew the routes. They all reached Rishikesh on 12.06.93 and stayed at Rishikesh. From Rishikesh they came up to Guptkashi and in the next morning started for Gaurikund. From Gaurikund they proceeded for Kedarnath and stayed alongwith other companions at Rambada in the Rana Hotel in the night of 14/15.06.93. The lodge was booked by Ganga Dass appellant and they started for Kedarnath on 15.06.93 and they returned on the same day. Again they stayed in the Rana Hotel. PW2 Vikram Singh Pawar has further stated in his statement that on the date of incident

Badri Prasad Tiwari, PW4 stated to him that he was feeling giddiness and he has administered something by the appellant and also to other companions who were lying unconscious in the room. He went inside the room and found that 5 persons were lying unconscious and they were vomiting. This fact further stands corroborated by the entry in the Hotel register (Ex. 1), which has been proved by PW1 Govind Singh Rana, He proved the entries of the register and stated that Ganga Dass himself booked room no.1 from 14.06.93 to 16.06.93. In the party there were 3 ladies and 5 gents. He filed the photocopy of the relevant register, which is Ex. Ka 10. These fact further stands corroborated by the statement of the appellant recorded U/s 313 Cr. P.C. in which the appellant has admitted that he stayed on 14.06.93 and in the night of 15.06.93 alongwith Smt. Vedmati and 6 others in Rana Hotel. Thus, it is clearly established that PW4 Badri Prasad Tiwar, Smt. Ramvati, Smt. Radhika Devi, Mahendra Prasad Sharma, Balbhadra Pathak and Munni Lal stayed alongwith appellant and Vedmati in Rana Hotel on the fateful night of the incident.

It was submitted that the FIR discloses the date of incident as 14/15.6.1993 whereas the incident took place in the night of 15/16.6.1993. The learned A.G.A. refuted the contentions and contended that due to remissness on the part of police the date of incident has been indicated as 14/15.6.1993 whereas the incident took place on 15.6.93 at 10 p.m. P.W.1 Govind Singh Rana and P.W.4 Badri Prasad Tiwari have categorically stated that they stayed alongwith other companions at Rambada in Rana Hotal in the night of 14/15.6.1993 and the lodge was booked by Ganga Prasad appellant from 14.6.93 to 16.6.93. The above

Witnesses have further stated that the appellant as well as other co-pilgrims started for kendarnath in the morning of 15.6.903 and returned on the same day and again stayed in Rana Hotel and the food was prepared in the same evening and the incident took place on the same night. The written report submitted to the police only indicates that on the day when the incident took place they stayed in Rana Hotel i.e. on 14/15.6.93. There is no suggestion on the part of the defence that no incident took place on 15/16.6.93. The written report submitted by P.W.2 Vikram Singh Rana also mentions that Badri Prasad Tiwari came to him at about 12 midnight and he found that co-pilgrims were unconscious in the room. Thus, the ocular testimony as well as the documentary evidence completely establish that the incident took place on 15.6.93 at 10 p.m. and they were treated in the early morning of 16.6.93 at about 12 or 12.30 midnight and thereafter they were sent to hospital at Gopeshwar in the morning of 16.6.93. The contention of learned counsel for the defence is not tenable.

Now, I have to consider as to whether the appellant and Smt. Vedmati prepared the food for Badri Prasad and other co-pilgrims. PW4 Badri Prasad has stated in his statement that they were fully tired; therefore nobody was willing to prepare the meal. But the appellant Ganga Prasad said that it would not be good to sleep without taking the meal. Therefore, the appellant and Smt. Vedmati cooked the food. Smt. Vedmati prepared the Roti whereas the appellant prepared Dal and the appellant offered the co-pilgrims to take the meal. At the request of the appellant, all of them took the meal at 10 p. m. When they were taking the meal, the taste of the meal was not good. As soon

as they took the food they started feeling giddiness. PW4 Badri Prasad Tiwari came down and started making hue and cry that the appellant and Smt. Vedmati had given some poisonous substance to them in the food. Meanwhile, the other co-pilgrims also became unconscious. PW1 Govind Singh took Badri Prasad to the Dispensary for the treatment. Badri Prasad also stated that Gang Prasad and Smt. Vedmati prepared the food but they had not taken it at that time. Badri Prasad has himself stated that he has given something in the food, which the appellant prepared. He has denied in his statement that they took the food in the Hotel. This fact further stands corroborated by the evidence of PW5 S.I. Om Veer Singh, who has stated in his statement that he proceeded to the spot and took two Rotis from the room under recovery memo Ex. Ka 6 and he found that victim, Badri Prasad and Mahendra Prasad Sharma regained the consciousness but Smt. Radhika Devi and Ramvati, Balbhadra and Munni Lal were unconscious. They were taking to the Hospital Gaurikund and thereafter to Gopeshwar Civil Hospital. He also stated in his statement that he took utensils in his possession under recovery memo Ex ka 8. He also took stove and other utensils in his possession vide recover memo Ex. Ka 10. In his cross-examination he has further stated that in the Bhagona there were some marks that the meal was prepared in that Bhagona. There were no Thali and Parat inside the room. There were some signs of preparation of food beneath the Bhagona. Theses utensils and stove of Kerosine oil further proved the fact that the food was prepared in the room. It was submitted that there was no carbon in the Bhagona so there was no probability to prepare the food at the

place of incident. The contention is insignificant because the kerosene stove does not emit any carbon and there is no question of being any sign of carbon in the Bhagona. This fact further stands corroborated that Smt. Vegmati is still absconding and the appellant was also arrested from the taxi stand by the Investigating Officer. The absconding of appellant and Smt. Vegmati proves the facts that the food was prepared by them and they administered the poisonous substance to Badri Prasad Tiwari and others. The appellant in the statement U/s 313 Cr. P.C. has denied that he prepared the food and served the same to Badri Prasad and others. He further stated that he took the meal from the Bhandara and Badri Prasad and his companions took the food from the Hotel itself. This fact further falsifies by the evidence of PW1 and PW4. The evidence of PW1 and PW4 is cogent and credible to the effect that the appellant and Smt. Vegmati cooked the food and served the same to Badri Prasad and his companions. Badri Prasad and his companions were taken to the hospital at Gopeshwar as stated by the prosecution witnesses.

The appellant has admitted in his statement U/s 313 Cr.P.C. that he consumed the Bhang. In the statement, it is very much admitted that the appellant and co-pilgrims stayed at Rambada and they had gone for Darshan at Kedarnath and came back at Rana Hotel and stayed there. He has admitted that co-pilgrims fell unconscious and a F.I.R. was lodged against him. PW1 Govind Singh, PW2 Vikram Singh Pawar and PW4 Badri Prasad have categorically stated that some poisonous substance was administered to them by serving the food at the fateful night of the incident. They left the place of occurrence and the appellant was arrested

from the taxi stand. Smt. Vedmati is still absconding. The conduct of the appellant and Smt. Vedmati further corroborates that they administered poisonous food to Badri Prasad and his companions. The fact further stands corroborated by the medical opinion of the Pharmacist PW2 Vikram Singh Pawar, who found the companion of Badri Prasad Tiwari lying unconscious in the room and he was of the opinion that they consumed some poisonous substance. PW3 Kushal Pal Singh is a formal witness who has proved written report Ex. Ka 1, F.I.R. Ex. Ka 3 and G.D. entry Ex. Ka 4.

From the appraisal of the entire evidence on record it is evident that the appellant committed an offense U/s 328 I.P.C.

The appeal is dismissed. The conviction and sentence awarded by the trial court against the appellant are confirmed.

Let the record alongwith a copy of this judgment be sent back to the trial court immediately for necessary action and compliance and the report to be submitted two months.

(J.C.S. Rawat J)

August 11, 2004.